
Kitselas - Province of BC Environmental Assessment Agreement

BETWEEN:

KITSELAS FIRST NATION

AND:

THE MINISTER OF ENVIRONMENT AND CLIMATE CHANGE STRATEGY

Dated: April 20, 2023



TABLE OF CONTENTS

1.	DEFINITIONS.....	4
2.	INTERPRETATION.....	6
3.	AGREEMENT APPLICATION.....	7
4.	PURPOSE.....	7
5.	PRINCIPLES.....	8
6.	COLLABORATION STRUCTURES AND RESPONSIBILITIES.....	9
7.	FUNDING.....	10
8.	TIMELINES.....	11
9.	CONSENSUS SEEKING AND ISSUES TRACKING.....	11
10.	ISSUES RESOLUTION.....	13
11.	USE AND PROTECTION OF INDIGENOUS KNOWLEDGE.....	13
12.	CONFIDENTIALITY AND INFORMATION SHARING.....	14
13.	RELATIONSHIP TO OTHER AGREEMENTS.....	15
14.	AMENDMENT, SUSPENSION AND TERMINATION.....	15
15.	REPRESENTATIONS AND WARRANTIES.....	16
16.	NOTICE AND DELIVERY.....	17
17.	OUTCOMES NOT PREDETERMINED.....	17
18.	CONSULTATION AND NON-DEROGATION.....	18
19.	GENERAL.....	18

SCHEDULES:

- Schedule A - Map of Traditional Territory
- Schedule B - Environmental Assessment Process
- Schedule C - Kitselas Values
- Schedule D - Flow Chart

KITSELAS - PROVINCE OF BC ENVIRONMENTAL ASSESSMENT AGREEMENT

THIS AGREEMENT (“Agreement”) made effective as of the 20th day of April, 2023 (the “Effective Date”)

BETWEEN:

KITSELAS FIRST NATION, a band per section 2 of the *Indian Act*, R.S.C., 1985, c. I-5 as represented by Chief and Council with an address at 2225 Gitau Road, Terrace, BC V8G 0A9

(“Kitselas”)

AND:

THE MINISTER OF ENVIRONMENT AND CLIMATE CHANGE STRATEGY

(each a “Party” and collectively the “Parties”)

WHEREAS:

- A. Kitselas maintains that they have lived in what is now considered northwest British Columbia since time immemorial. Kitselas have identified traditional territory that stretches from the Pacific Ocean to the Skeena River Valley (the “**Kitselas Territory**”), as shown in Schedule A.
- B. Kitselas has Aboriginal rights, including inherent rights and Aboriginal title, which are recognized and affirmed by Section 35 of the *Constitution Act, 1982*, and has identified other interests that are in addition to and distinct from its Section 35 Rights (collectively, the “**Kitselas Interests**”).
- C. Kitselas Citizens (defined below) continue to exercise the Kitselas Interests throughout the Kitselas Territory.
- D. Kitselas’ governance includes the implementation of its laws, policies and cultural values (“**Kitselas Laws**”) to all decisions within the Kitselas Territory.
- E. On November 28, 2019, the *Declaration on the Rights of Indigenous Peoples Act*, SBC 2019, C. 44 was enacted into law which provides a framework for how the *United Nations Declaration on the Rights of Indigenous Peoples* (“**UN Declaration**”) will be implemented in British Columbia.
- F. The Environmental Assessment Office (“**EAO**”) has responsibilities under the *Environmental Assessment Act*, SBC 2018, C. 51 (the “**Act**”) and, the Province of British Columbia (the “**Province**”) has obligations to consult and, where appropriate, accommodate Kitselas in respect of all environmental assessments (“**EA**”) in Kitselas Territory.
- G. The Parties are determined to build a strong and effective working relationship and want to carry out all EA Processes (defined below) within Kitselas Territory in a manner that is, at a minimum, consistent with the Act, the UN Declaration, the common law, the Kitselas Reconciliation Agreement (defined below), and Kitselas Laws.
- H. The Parties wish to enter this Agreement to set out a framework for carrying out EA Processes for Projects within the Kitselas Territory or that may impact Kitselas Interests.

1. DEFINITIONS

1.1 In this Agreement, these defined terms will have the following meaning:

- (a) **“Act”** means the *Environmental Assessment Act*, SBC 2018, c. 51, and all associated regulations and policies.
- (b) **“Amendment”** means an amendment to an Environmental Assessment Certificate or Exemption Order under Section 32 of the Act.
- (c) **“Amendment Assessment Report”** means a document prepared for the Decision-Maker that may include any recommendation on whether to issue an Amendment.
- (d) **“Application”** means an Application for an Environmental Assessment Certificate under Section 27 the Act.
- (e) **“CEAO”** means the Chief Executive Assessment Officer as defined in the Act.
- (f) **“Collaborate”, “Collaboration” or “Collaboratively”** means the Parties working together in a manner that:
 - (i) is Meaningful;
 - (ii) meets the needs of Decision-Makers, which includes Seeking Consensus at key milestones throughout the EA Process as specified in the Act; and
 - (iii) recognizes and respects all Parties’ views and knowledge.
- (g) **“Confidential Indigenous Knowledge”** means any Indigenous Knowledge provided by Kitselas to the EAO that is identified in writing as being confidential;
- (h) **“Consensus”** has the meaning set out under section 9.2 of this Agreement.
- (i) **“Consensus Seeking” or “Seeking Consensus”** is the process described under Article 9 of this Agreement.
- (j) **“Consensus Tracking Tool”** means the process of recording and Collaboratively evaluating issues, tracking the status of issues, outlining the positions of the Parties, describing the resolution sought and reporting on Consensus outcomes throughout the EA Processes.
- (k) **“Consent”** means Kitselas’ giving of consent that is free, prior and informed and is consistent with the UN Declaration.
- (l) **“Consent Decision”** means Kitselas’ decision on whether to Consent to:
 - (i) the issuing of an exemption or termination order under Sections 16(4)(b) and 16(5)(b) of the Act;
 - (ii) a decision under Section 16(2)(a) of the Act to require the Proponent to submit a revised Detailed Project Description;
 - (iii) a decision under Section 16(2)(d) of the Act to proceed to an EA;

- (iv) the issuing of an environmental assessment certificate under Section 29(2)(c) of the Act;
or
- (v) the issuing of an amendment to an environmental assessment certificate under Section 32 of the Act.
- (m) **“Decision-Maker”** means the person or persons identified by the Act or by Kitselas to make decisions under their respective jurisdictions.
- (n) **“Detailed Project Description”** means the description submitted under Section 15(1) of the Act.
- (o) **“EA”** has the meaning set out at Recital F.
- (p) **“EAC”** means an Environmental Assessment Certificate issued pursuant to Section 29(4) of the Act.
- (q) **“EA Process”** means a process pursuant to the Act relating to a Project.
- (r) **“Effective Date”** has the meaning first written above.
- (s) **“Exemption Order”** means an order made under Section 17(1)(b) of the Act.
- (t) **“Holder”** means the holder of an EAC or Exemption Order.
- (u) **“Implementation Committee”** means the leadership representatives identified by each party to govern the implementation of this Agreement.
- (v) **“Indigenous Knowledge”** means information held by Kitselas or a Kitselas Citizen as it relates to Kitselas tradition, Kitselas Laws, custom or practices, and which Kitselas decides is appropriate to be used in an EA.
- (w) **“Initial Project Description”** means the description submitted under Section 13(1) of the Act.
- (x) **“Kitselas Citizens”** means all those persons who are collectively entitled to exercise the Kitselas Interests and includes any person who is a registered member of Kitselas First Nation.
- (y) **“Kitselas Interests”** has the meaning set out in Recital B.
- (z) **“Kitselas Laws”** has the meaning set out in Recital D.
- (aa) **“Kitselas Reconciliation Agreement”** means the Kitselas Reconciliation Agreement signed between Kitselas First Nation and the Province on March 22, 2017.
- (bb) **“Kitselas Territory”** has the meaning set out in Recital A.
- (cc) **“Kitselas Values”** has the meaning set out in Schedule C.
- (dd) **“Meet”** and **“Meeting”** means a discussion, whether in person, by phone, or online.
- (ee) **“Meaningful”** or **“Meaningfully”** means engagement that is accessible, supports Kitselas’ ability to exercise Consent, and where all Parties’ views and knowledge are recognized and respected.

- (ff) “**Minister**” means the Minister of Environment and Climate Change Strategy or the Responsible Minister, and “**Ministers**” means both, or either of their deputy or associate deputy.
- (gg) “**Participating Indigenous Nation**” has the same meaning as in the Act.
- (hh) “**Project**” has the same meaning as under the Act.
- (ii) “**Project Notification Report**” means the report that is prepared for the CEAO and that documents the review process and any conclusions related to a Project notification received under Section 10(1) of the Act.
- (jj) “**Project Specific Working Group**” means the working group established under section 6.4 of this Agreement.
- (kk) “**Project Specific Work Plan**” means a plan developed pursuant to section 6.4(e) of this Agreement.
- (ll) “**Proponent**” has the same meaning as under the Act.
- (mm) “**Reviewable Project**” has the same meaning as under the Act.
- (nn) “**Reconciliation**” for the purpose of this Agreement, means the process of carrying out all relations between the EAO and Kitselas in a manner that Meaningfully contributes to the implementation of the UN Declaration as it applies to BC’s environmental assessment processes and meets the Province’s legal obligations to Kitselas including upholding the honour of the Crown and discharging the duty to consult.
- (oo) “**Responsible Minister**” has the same meaning as in the Act;
- (pp) “**Sustainability Recommendation**” means the recommendations made under Section 29(2)(b)(i) of the Act.
- (qq) “**Senior Official**” means an individual who is employed or appointed:
 - (i) by the Environmental Assessment Office as an Assistant Deputy Minister; or
 - (ii) by Kitselas as a Chief Administrative Officer, Director or Negotiator.
- (rr) “**Technical Advisory Committee**” means the advisory group established by the EAO pursuant to Section 21(1) of the Act to provide technical advice relating to an Application, typically including representatives of Indigenous Groups, and federal, provincial and local government agencies.
- (ss) “**UN Declaration**” means the *United Nations Declaration on the Rights of Indigenous Peoples*.
- (tt) “**Valued Components**” means components of the biophysical and human environment that are considered in the EA Process to have scientific, ecological, economic, social, health, cultural, archaeological, historical, or other importance.

2. INTERPRETATION

2.1 For the purpose of this Agreement except as otherwise expressly provided:

- (a) any capitalized terms not defined in section 1.1 are presumed to have the same meaning as set out in the Act;
- (b) any reference to a statute will include and will be deemed to be a reference to such statute and to the regulations made pursuant thereto, with all amendments made thereto and enforced from time to time, and to any statute or regulation that may be passed which has the effect of supplementing or superseding the statute so referred to or the regulations made pursuant thereto;
- (c) all references in this Agreement to designated "articles", "sections", "subsections", "clauses", "Schedules" and other sub divisions are the designated articles, sections, sub sections, clauses, Schedules and other sub divisions of this Agreement;
- (d) the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not, unless otherwise specified, to any particular article, section, sub section, clause or other sub division; and
- (e) the words "including", when followed by any general statement, term or matter, is not intended to be construed to limit such general statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non limiting language (such as "without limitation" or "but not limited to" or words to similar import) is used with reference thereto, but rather is to be construed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter.

3. AGREEMENT APPLICATION

- 3.1 Subject to Section 14 of the Act, the Agreement applies to all Projects within the Kitselas Territory or where there is a reasonable possibility, in the opinion of Kitselas, that Kitselas Interests may be impacted by a Project.

4. PURPOSE

- 4.1 The purpose of this Agreement is to establish a government-to-government framework that describes how the EAO and Kitselas will Collaborate on EA Processes and includes:
 - (a) Advancing Reconciliation between the EAO and Kitselas;
 - (b) Conducting efficient, effective, transparent, and rigorous EA Processes that are responsive to direct and indirect impacts on Kitselas' Interests, and the legal obligations of the EAO, leading to shared information that will inform Decision-Makers;
 - (c) Seeking Consensus in relation to decisions at key milestones throughout the EA Process;
 - (d) Supporting Kitselas' ability to exercise its Consent on Projects in a manner consistent with the UN Declaration;
 - (e) Delivering EA Processes that, at a minimum, are consistent and compliant with other agreements between the Parties;

- (f) Increasing certainty for Kitselas and the EAO relating to EA Processes under the Act as they relate to Kitselas; and
- (g) Optimizing the use of the Parties' resources.

4.2 In order to meet the above purposes, the Parties will follow the process set out in Schedule B, subject to section 14.2.

5. PRINCIPLES

5.1 As both Parties communicate with each other under this Agreement and in respect of processes under the Act, they will abide by the following principles:

- (a) Transparency and Trust:
 - (i) The Parties value processes that are clear and predictable and information that is shared in a timely and accessible manner to allow both Parties to better understand each other's interests and perspectives. The Parties recognize that the need for transparency will have to be balanced at times with legal obligations, including the need to protect confidential information, particularly when information is culturally sensitive or significant to Kitselas.
- (b) Commitment to Reconciliation:
 - (i) The Parties acknowledge and recognize that the framework in this Agreement is intended to support Reconciliation between the Parties based upon mutual recognition and respect. The Parties are committed to enhancing their working relationship, to further common interests, and to resolve common challenges. Both Parties favour the route of discussion and Consensus seeking in meeting their challenges.
- (c) Consensus:
 - (i) While recognizing each Parties' respective mandates and authorities, the Parties' representatives will seek to achieve Consensus on key decision points as set out in this Agreement.
- (d) Pluralistic Problem Solving:
 - (i) The Parties recognize that from time to time, difficult issues may arise that require contentious decisions. Both Parties will attempt to resolve issues in an interest-based manner, using issue resolution processes that draw from both alternative dispute resolution strategies and from Indigenous Knowledge, as appropriate. Where mutually agreed upon solutions are not reached, the Parties will communicate their decisions wherever possible, in advance of their coming into effect.
- (e) Respect:
 - (i) The Parties recognize the importance of their relationship and the government-to-government basis for discussions. The Parties recognize and respect each other's mutual responsibilities in relation to Projects proposed in Kitselas Territory or where there is a reasonable possibility that Kitselas Interests may be impacted by a Project.

- (f) Capacity:
 - (i) The Parties recognize that financial and human resource capacity is essential to meaningful participation in EAs and anticipate that Kitselas may need additional capacity funding beyond that which the EAO provides for the processes under this Agreement.
- (g) Informed Decision Making:
 - (i) The Parties recognize the need for the EAO and Kitselas to be fully informed by the potential effects of a Project on Kitselas Interests prior to making a final decision.
- (h) Continuous Improvement:
 - (i) The Parties will commit to learn from ongoing engagement to improve mutually beneficial processes and outcomes that will enhance the government-to-government relationship and support Reconciliation.

6. COLLABORATION STRUCTURES AND RESPONSIBILITIES

- 6.1 The Parties will establish a bilateral Implementation Committee comprised of the Director of Lands and Resources for Kitselas and the Executive Director of Indigenous Partnerships and Engagement for the EAO (or their designates).
- 6.2 The Parties agree that participation in meetings of the Implementation Committee and the Senior Officials may be extended to other representatives of the Parties who are best positioned to address the matters at hand.
- 6.3 The Implementation Committee will:
 - (a) Manage the implementation of this Agreement including approving any proposed revisions to the Agreement;
 - (b) Appoint the members of Project Specific Working Groups on behalf of each respective Party;
 - (c) Refer issues to the Senior Officials as set out in Article 10 and section 7(g) of Schedule B and participate in those discussions as Kitselas may deem appropriate;
 - (d) Meet as requested by the Parties;
 - (e) Undertake discussions as needed regarding matters that have relevance across EA Processes;
 - (f) Undertake discussions of strategic issues that may arise as needed;
 - (g) Consider matters brought to it relating to issues resolution provisions in Article 10; and
 - (h) Operate in accordance with the Consensus principle as described in section 5.1(c).
- 6.4 The Parties may establish a Project Specific Working Group responsible for the Collaborative delivery of an EA Process. The Project Specific Working Group will:

- (a) Consist of the EAO Project assessment team and Kitselas technical staff and any additional person identified by the Implementation Committee;
- (b) Collaborate on the delivery of the EA under this Agreement;
- (c) Be accountable to the Implementation Committee established under this Agreement;
- (d) Seek Consensus according to the procedures outlined in Article 9;
- (e) Develop and deliver the Project Specific Work Plan, subject to section 6.4(b) of Schedule B, that describes specific Collaboration activities and corresponding timelines, and roles of the respective Parties, which the Parties will apply to informing the decision-making of all Parties in relation to the Application; and
- (f) Seek to resolve issues prior to elevating the issues to the Implementation Committee.

7. FUNDING

- 7.1 The Parties recognize the importance of the development of the internal capacity of Kitselas and the EAO will seek to understand the capacity needs of Kitselas to Meaningfully participate in each EA Process, including the capacity needs regarding community engagement, studies, and other key areas.
- 7.2 The EAO will provide Kitselas with capacity funding to participate in the processes under this Agreement in accordance with its applicable funding policy.
- 7.3 Where Kitselas is participating in an EA Process and is of the view that capacity funding provided by the proponent is insufficient:
- (a) Kitselas will inform the EAO of this view as early as possible in the EA Process, and
 - (b) unless the CEAO has provided Kitselas with a notice under Section 14(2) of the Act in relation to the Project, the EAO will:
 - (i) as necessary, encourage the proponent to provide funding sufficient to enable Kitselas' Meaningful participation in the EA Process in order to help inform the consultation process and Kitselas' Consent Decision, avoid potential impacts to Kitselas Interests resulting from the Project, and reduce uncertainty for the Project by supporting the adequacy of consultation and accommodation on the EA Process; and
 - (ii) if, at the end of the EA Process, Kitselas is of the view that adequate funding was not provided, then the EAO will include this view in the final decision-making materials.
- 7.4 If, after the Effective Date, the EAO provides to another Indigenous Nation base capacity funding for implementation of an agreement similar to this Agreement, then the EAO will notify Kitselas and the Parties will discuss any interest expressed by Kitselas in receiving base capacity funding in respect of this Agreement and may agree to provide base capacity funding.
- 7.5 For greater certainty:
- (a) nothing in this Agreement is intended to affect Kitselas' eligibility for other funding that may be available from the Province. For greater certainty, funding under any provincial programs will be provided in accordance with their funding criteria.

- (b) nothing in this Agreement precludes Kitselas from establishing capacity funding agreements with the Proponent or any other third party to support Kitselas in connection with its work under this Agreement.
- (c) capacity funding agreements with the Proponents or any other third party will not reduce the amount of funding Kitselas would otherwise receive from the EAO.

8. TIMELINES

- 8.1 The Parties will strive to meet all timelines under this Agreement and, where applicable, the Act, recognizing that the level of capacity funding, timeliness and completeness of information sharing, and other factors, such as Kitselas elections and changes in leadership, may affect Kitselas' ability to meet those timelines.
- 8.2 The EAO recognizes that in addition to being closed for statutory holidays, Kitselas offices are closed for the Christmas holidays, National Indigenous Peoples Day, and the National Day for Truth and Reconciliation. Kitselas staff may also take days off specifically for cultural activities.
- 8.3 Kitselas will make reasonable efforts to give the EAO advance notice of the office closures and holidays listed in 8.2 and the EAO will use reasonable efforts to accommodate these throughout the EA Processes.
- 8.4 Where Kitselas requests more time to participate in a process under this Agreement and the timeline is set by the Act:
 - a. Kitselas and the EAO will seek to reach agreement on recommendations to the Decision-Maker for more time under Section 38 of the Act including the rationale;
 - b. where Kitselas and the EAO are unable to reach agreement and Kitselas is a Participating Indigenous Nation, Kitselas may submit an application under Section 38 of the Act; and
 - c. the Decision-Maker will seriously consider Kitselas' recommendation or application and provide a response.
- 8.5 Where Kitselas requests more time to participate in a process under this Agreement and the timeline is not set by the Act:
 - a. Kitselas and the EAO will seek to reach agreement on the timeline;
 - b. where Kitselas and the EAO are unable to reach agreement on the timeline, EAO will seriously consider the request for more time; and
 - c. the EAO will provide Kitselas with a response.
- 8.6 For greater certainty, where Kitselas and the EAO seek to reach agreement under 8.4(a) or under 8.5(a), the Parties may use issues resolution under this Agreement, as applicable.

9. CONSENSUS SEEKING AND ISSUES TRACKING

- 9.1 Consensus Seeking is more than just the exchanging of information and ideas, Consensus Seeking is the act of Collaborative identification and exploration (i.e., deep consideration) of options leading to resolution with the shared goal of achieving agreement or, at a minimum, Consensus. Activities will be undertaken through Collaboration between the EAO and Kitselas in an effort to achieve Consensus on

process decisions or recommendations. A desired outcome of Consensus Seeking will be to support Kitselas in making an informed decision regarding Consent.

9.2 Kitselas and the EAO will achieve Consensus where an action:

- (a) is supported by Kitselas and the EAO; or
- (b) at least is not objected to by Kitselas.

9.3 Consensus Seeking is the process that includes the following considerations:

- (a) Consensus Seeking must include the recognition and consideration of each Party's views;
- (b) Where issues or disputes arise in respect of Consensus Seeking, the Parties will utilize deliberate and practical attempts to resolve issues or areas of disagreement, through compromise, with the objective of all participants in the discussion agreeing with the path forward;
- (c) Consensus Seeking is demonstrated through a Meaningful process of information sharing and analysis of that information that better informs each Party's respective decision-making;
- (d) Consensus is separate and distinct from a Consent Decision;
- (e) Consensus decisions may inform, but are distinct from a Consent Decision; and
- (f) Consensus decisions may be informed by, but are separate and in addition to, Kitselas' participation in the Technical Advisory Committee.

9.4 The Parties will Seek Consensus throughout each EA Process as set out in this Agreement and may require issues resolution under Article 10 and/or dispute resolution pursuant to Section 5(2) of the Act.

9.5 The Project Specific Working Group will implement and maintain the Consensus Tracking Tool to document and Meaningfully evaluate issues, support Consensus Seeking between the Parties during an EA and have the following features:

- (a) subject to Articles 11 and 12, track Kitselas Indigenous Knowledge and protocols including how the information was incorporated into the EA Process and any outstanding issues and concerns in respect to Kitselas Indigenous Knowledge and protocols;
- (b) identifies and documents issues raised during the course of the EA Process including under Project Specific Work Plans;
- (c) monitors and records how issues are addressed at key milestones of the EA Process as outlined in Article 8; and
- (d) considers the sufficiency of the information provided through the process, with an intent of forming a record for Decision-Makers on the outcomes of Consensus Seeking throughout the EA Process.

9.6 The Parties will provide a response in relation to any outstanding information needs, requests, comments, concerns and recommendations, and document these responses in the issue tracking system.

10. ISSUES RESOLUTION

- 10.1 The Parties recognize that the success of this Agreement will depend on their ability and willingness to recognize, explore and resolve differences which may arise between them, and that they will endeavor to resolve such differences in a manner that fosters an improved ongoing and respectful government-to-government relationship.
- 10.2 Where there are Project-specific issues, the Parties agree as follows:
- (a) Kitselas and the EAO agree that Project-specific issues that arise throughout an EA Process, that are not able to be addressed by the Project Specific Working Group will be elevated to the Implementation Committee for discussion and potential resolution.
 - (b) When an issue is referred by the Project Specific Working Group, the Implementation Committee will Meet to Meaningfully seek to resolve the issue prior to triggering dispute resolution under Section 5(2) of the Act.
- 10.3 Where there are issues in respect of interpretation of this Agreement, other than Project-specific issues under section 10.2 (an “**Interpretation Dispute**”), the Parties agree as follows:
- (a) If an Interpretation Dispute is not able to be resolved by the Project Specific Working Group, then the Interpretation Dispute will be elevated to the Implementation Committee for discussion and potential resolution.
 - (b) If the Implementation Committee is unable to reach agreement on or resolve the Interpretation Dispute, then either Party may deliver to the other Party a written notice (the “**Dispute Notice**”) describing in reasonable detail the Interpretation Dispute. The Senior Officials will meet within 14 days of the receipt of the Dispute Notice and will attempt in good faith to identify a resolution to the Interpretation Dispute within 30 days of delivery of the Dispute Notice and recommend such resolution to the Parties, provided no such recommendation will be binding on the Parties until approved by both Parties in writing.
 - (c) The Senior Officials will use diligent efforts to resolve an Interpretation Dispute and may involve other experts and associates as agreed to in their discussions. If the Interpretation Dispute has not been resolved by agreement of the Parties within 30 days after the delivery of the Dispute Notice, then:
 - (i) the Parties will document the disagreement and carry on with the EA Process; or
 - (ii) the Parties will suspend Schedule B for the EA Process as set out in section 14.2; and
 - (iii) the Parties may agree to amend this Agreement as set out in section 14.6.

11. USE AND PROTECTION OF INDIGENOUS KNOWLEDGE

- 11.1 The EAO agrees that Kitselas retains its entire right, title and interest in and to all Kitselas Indigenous Knowledge and that Kitselas Indigenous Knowledge belongs to Kitselas or any Kitselas Citizen who shared it, including Kitselas Indigenous Knowledge that was collected using funding external to Kitselas.
- 11.2 Where apparent inconsistencies emerge between western knowledge and Kitselas’ Indigenous Knowledge in an EA, Kitselas and the EAO’s representatives will explore whether these apparent inconsistencies can be explained or resolved, including through the Technical Advisory Committee as

appropriate in the circumstances. Where these inconsistencies remain unresolved, they will be communicated to the Parties' Decision-Makers. For greater certainty, western knowledge and Kitselas' Indigenous Knowledge are equally valid and any inconsistencies are to be assessed from that perspective.

- 11.3 Where a proponent includes Kitselas Indigenous Knowledge within their application, the EAO will:
- a) request confirmation from Kitselas and the proponent that the proponent received permission from Kitselas to include the Indigenous Knowledge; and
 - b) encourage the proponent to work with Kitselas to ensure the Indigenous Knowledge is applied appropriately.

12. CONFIDENTIALITY AND INFORMATION SHARING

- 12.1 Prior to Kitselas submitting Indigenous Knowledge to the EAO, Kitselas and the EAO will work together to determine what information is confidential and who may access any Confidential Indigenous Knowledge.
- 12.2 When Kitselas provides Confidential Indigenous Knowledge to the EAO, Kitselas will clearly mark the Confidential Indigenous Knowledge as confidential and provide it to one of the individuals identified under subsection 75(1) of the Act.
- 12.3 The EAO will only use Indigenous Knowledge, including any Confidential Indigenous Knowledge, that Kitselas has shared during an EA Process for the purpose of that EA Process.
- 12.4 Where Kitselas shares Indigenous Knowledge during an EA Process, the EAO may share the Indigenous Knowledge, except for any Confidential Indigenous Knowledge, with other provincial or federal agencies for the purpose of reviewing the project or issuing project authorizations. Where the EAO intends to share Indigenous knowledge under this provision, it will notify Kitselas in advance.
- 12.5 The EAO may only share Confidential Indigenous Knowledge with representatives of other provincial ministries or federal agencies or departments with Kitselas' written consent.
- 12.6 The EAO will not disclose Confidential Indigenous Knowledge except in accordance with Section 75 of the Act or where required by law.
- 12.7 Where the CEAO determines that it is necessary for the purposes of procedural fairness under subsection 75(2)(c) of the Act to disclose Confidential Indigenous Knowledge:
- (a) the EAO will notify Kitselas of the potential disclosure requirement, engage with Kitselas regarding the scope of the information to be disclosed, the format of the information to be disclosed, and the conditions attached to the disclosure; and
 - (b) the EAO may request from Kitselas a non-confidential summary of the Confidential Indigenous Knowledge that can be disclosed to third parties.
- 12.8 If the EAO advises Kitselas that it is necessary to disclose Confidential Indigenous Knowledge pursuant to section 12.7 or, subject to section 12.9, Kitselas decides for any reason to withdraw all or some Confidential Indigenous Knowledge, Kitselas may withdraw all or some of that Confidential Indigenous Knowledge from consideration in the EA Process.

- 12.9 If the EAO, the Minister or the Ministers make a decision under the Act that relies on Confidential Indigenous Knowledge, Kitselas cannot subsequently withdraw that Confidential Indigenous Knowledge.
- 12.10 The EAO acknowledges that the disclosure of Confidential Indigenous Knowledge to any other party requesting such information under the *Freedom of Information and Protection of Privacy Act* (“**FIPPA**”) could be reasonably expected to harm the relations between the Province and Kitselas or harm the right of Kitselas to maintain, control, protect or develop its cultural heritage, traditional knowledge, traditional cultural expressions and manifestations of its sciences, technologies or cultures.
- 12.11 If the Province receives a request for disclosure under FIPPA or is otherwise required by law to disclose Confidential Indigenous Knowledge, the EAO will provide Kitselas with notice of the request and the opportunity to express any views regarding the disclosure and may request a description of the harm Kitselas anticipates could arise from the disclosure of the Confidential Indigenous Knowledge.
- 12.12 The EAO will manage information in a manner that is consistent with the Act, FIPPA, and the *Information Management Act*.
- 12.13 In any event, the EAO will safeguard Indigenous Knowledge and Confidential Indigenous Knowledge in a manner consistent with the *Information Management Act* and with at least a reasonable degree of care.

13. RELATIONSHIP TO OTHER AGREEMENTS

- 13.1 The Parties recognize that the Province and Kitselas have signed the Kitselas Reconciliation Agreement. As contemplated in the Kitselas Reconciliation Agreement, this Agreement is intended to create an efficient, effective, and meaningful approach to government-to-government engagement and assessments associated with development impacting Kitselas Territory that may impact Kitselas’ Interests.
- 13.2 Upon request by Kitselas, the EAO and Kitselas will engage the Ministry of Indigenous Relations and Reconciliation to seek an agreement to append this Agreement to the Kitselas Reconciliation Agreement as a “Subsequent Agreement” consistent with paragraph 4.2 of the Kitselas Reconciliation Agreement.
- 13.3 For certainty, nothing in this Agreement is intended to define, limit, enlarge, or modify any obligation that either Party has under the Kitselas Reconciliation Agreement.
- 13.4 The Parties will review and may choose to amend or terminate this Agreement upon completion of a final agreement between Kitselas, the Province and Canada in accordance with stage 5 of the British Columbia Treaty Commission process.
- 13.5 The Parties acknowledge Kitselas’ interest and intent in:
- (a) pursuing consent-based decision-making initiatives with the Province; and
 - (b) utilizing this Agreement to inform the consideration of such an initiative.

14. AMENDMENT, SUSPENSION AND TERMINATION

- 14.1 This Agreement will come into effect on the Effective Date and will continue until terminated under section 14.3.

- 14.2 The Parties acknowledge there may be circumstances under which this Agreement may not suit a particular EA Process. The Parties may suspend the process set out in Schedule B for an EA Process at any point by mutual agreement as follows:
- a) Either Party may provide notice of intent to suspend the Agreement with reasons;
 - b) The Parties may meet to discuss within 30 days of receiving a notice of intent to suspend the Agreement; and
 - c) If the Parties agree to suspend the process set out in Schedule B for an EA Process, then the EAO will engage with Kitselas and discuss whether and how Kitselas will participate in an EA Process.
- 14.3 The Parties may agree in writing to terminate this Agreement.
- 14.4 Kitselas may terminate this Agreement on sixty (60) days' notice.
- 14.5 The EAO may terminate this Agreement at any time sixty (60) days after the delivery of a written notice of proposed termination to Kitselas if:
- (a) Kitselas fails to perform or is in breach of any of its material obligations under this Agreement;
 - (b) any representation or warranty made by Kitselas in this Agreement is untrue or incorrect; or
 - (c) the Act is amended, supplemented, or superseded such that all or part of this Agreement is inconsistent with the Act.
- 14.6 In recognition of the enduring value of a government-to-government relationship between the Parties, the Parties will:
- (a) On notice of termination, provide the other Party with the reasons for termination; and
 - (b) The Parties will Meet face to face within thirty (30) days to attempt to resolve the issue prior to termination.
- 14.7 The Parties may amend this Agreement at any point upon mutual agreement. Such amendments shall be made in writing through the Implementation Committee. The Parties will review this Agreement as follows:
- (a) At the conclusion of the first EA for which this Agreement applies;
 - (b) Five years after completion of the review set out in subsection (a); and
 - (c) At the request of either Party.
- 14.8 Articles 11 and 12 related to Confidentiality and Freedom of Information survives the termination of this Agreement and, for greater certainty, continues to apply during any suspension under section 14.2.

15. REPRESENTATIONS AND WARRANTIES

15.1 Kitselas represents and warrants to the Province that:

- (a) it has the legal power, capacity and authority to enter into this Agreement; and

- (b) it has taken all necessary actions and has obtained all necessary approvals to enter into this Agreement.

15.2 The Province represents and warrants to Kitselas that:

- (a) it has the legal power, capacity and authority to enter into this Agreement; and
- (b) it has taken all necessary actions and has obtained all necessary approvals to enter into this Agreement.

15.3 Each Party enters into this Agreement with the intent and understanding that its representations and warranties will be relied on by the other Party and that this Agreement constitutes a valid and binding obligation upon it.

16. NOTICE AND DELIVERY

16.1 Any notice, document, statement or report under this Agreement must be in writing, and will be deemed validly given to and received by the other Party, if served personally, on the date of personal service or, if delivered by mail, e-mail or facsimile copier, when received as follows:

- (a) if to the EAO:

Chief Executive Assessment Officer
BC Environmental Assessment Office
PO Box 9426 Stn Prov Govt
Victoria BC V8W 9V1

Fax: (250) 356-6448

- (b) if to Kitselas:

Director of Lands and Resources
Kitselas First Nation
2225 Gitaus Road
Terrace, B.C. V8G 0A9

Attention: Director of Lands and Resource

Fax: (778) 634-3796

16.2 Either Party may, from time to time, give written or e-mail notice to the other Party of any change of address or facsimile number of the Party giving such notice and after the giving of such notice, the address or facsimile number therein specified will, for purposes of this Agreement be conclusively deemed to be the address or facsimile number of the Party giving such notice.

16.3 The Parties agree that they will utilize electronic and other methods of communication for the purposes of Engagement whenever practicable and appropriate.

17. OUTCOMES NOT PREDETERMINED

17.1 This Agreement:

- (a) does not indicate or predetermine any Kitselas Consent, support or non-objection in respect of any decision on a Project or any EA Process;
- (b) is not an acknowledgment by Kitselas of the sufficiency of consultation or accommodation in respect of any decision on a Project or EA Process;
- (c) is without prejudice to any position that Kitselas may take in the future with respect to any decision on a Project or EA Process; and
- (d) does not predetermine the outcome of any particular decision of the EAO or the Province with respect to EA Processes through all phases, including early engagement, regulatory reviews and approvals, operations, and closure and reclamation, as applicable.

18. CONSULTATION AND NON-DEROGATION

- 18.1 The Parties agree that the EAO holds the primary responsibility for discharging the constitutional obligations of the duty to consult and, where appropriate, to accommodate Kitselas in respect of any EA Process relating to a Project in Kitselas Territory.
- 18.2 This Agreement does not:
- (a) constitute a treaty or land claims agreement within the meaning of Sections 25 or 35 of the *Constitution Act, 1982*; or
 - (b) affirm, recognize, abrogate or derogate from any of the Kitselas Interests.
- 18.3 To the extent that there is any uncertainty with respect to this Agreement, the Parties agree that whichever interpretation is consistent with the UN Declaration and Section 35 case law will be the preferred interpretation.
- 18.4 The Parties acknowledge and enter into this Agreement on the basis that any implementation of the UN Declaration and advancement of Reconciliation pursuant to this Agreement contributes towards but is not in full satisfaction of all of the Province's obligations to consult, accommodate, implement the UN Declaration and advance Reconciliation with Kitselas. The Parties intend that the implementation of the UN Declaration and advancement of Reconciliation will be an ongoing process and that obligations exist on both Parties outside this Agreement to meet those objectives.

19. GENERAL

- 19.1 Unless otherwise agreed by the Parties, this Agreement (including any Project Specific Work Plan) constitutes the means by which the Parties will fulfill their obligations to carry out EA Processes and, where appropriate, a means by which the Province will identify potential measures or processes to accommodate any adverse impacts on Kitselas' Interests resulting from a Project.
- 19.2 Nothing in this Agreement will be construed as:
- (a) an admission by the Province of the scope, nature or geographic extent of any Aboriginal right, including Aboriginal title, of Kitselas that is recognized and affirmed by Section 35 of the *Constitution Act, 1982*;

- (b) an admission of the validity of, or any fact or liability in relation to, any claims relating to alleged past or future infringements of the Kitselas Interests;
 - (c) an acknowledgement of any obligation to provide any financial, economic or other compensation, including those in this Agreement, as part of the Province's obligation to consult and, as appropriate, accommodate; or
 - (d) in any way limiting the position the Parties may take in any discussions or negotiations between the Parties, except as expressly contemplated in this Agreement.
- 19.3 Nothing in this Agreement will be interpreted in a way that would affect or unlawfully interfere with any legislative authority of the Province or fetter the discretion given to any decision-making authority, including Kitselas'.
- 19.4 Nothing in this Agreement precludes or prevents Kitselas from benefiting from future developments in provincial statutes, regulations, or policies relating to EAs.
- 19.5 The Parties acknowledge that the Province has legal obligations, which may include procedural fairness obligations, to other parties, including other Indigenous groups, Proponents, Holders, Canada and stakeholders.
- 19.6 This Agreement and any amendment to it constitute the entire agreement between the Parties with respect to the subject matter of this Agreement, unless otherwise agreed in writing by the Parties.
- 19.7 If any part of this Agreement is void or unenforceable at law:
- (a) The invalidity of that part will not affect the validity of the remainder, which will continue in full force and effect and be construed as if this Agreement had been executed without the invalid part; and
 - (b) The Parties will negotiate and attempt to reach agreement on a replacement for the part declared or held invalid with a view to achieving the intent of the Parties as expressed in this Agreement.
- 19.8 Each of the Parties will, upon the reasonable request of the other, make, do, execute or cause to be made, done or executed all further and other lawful acts, deeds, things, devices, documents, instruments and assurances whatever for the better and absolute performance of the terms and conditions of this Agreement.
- 19.9 Any waiver of:
- (a) A provision of this Agreement;
 - (b) The performance by a Party of an obligation under this Agreement; or
 - (c) A default by a Party of an obligation under this Agreement,
- will be in writing and signed by the Party giving the waiver and will not be a waiver of any other provision, obligation or subsequent default.
- 19.10 Neither Party will assign, either directly or indirectly, this Agreement or any rights under this Agreement without the prior written consent of the other Party.

- 19.11 This Agreement will be governed by and construed in accordance with the laws of British Columbia and, where appropriate, the laws of Kitselas.
- 19.12 This Agreement may be executed in counterpart and delivered by email with a PDF attachment, each of which when executed and delivered shall constitute an original and all of which together shall constitute one and the same Agreement.
- 19.13 Time is of the essence in this Agreement.

IN WITNESS WHEREOF the Parties have executed this Agreement as set out below:

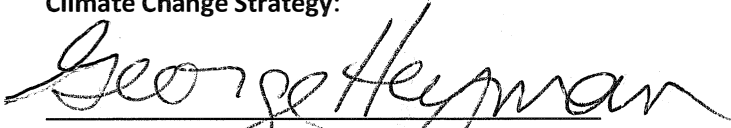
SIGNED on behalf of the **KITSELAS FIRST NATION**

by:


Chief Councillor Glenn Bennett

April 20, 2023
Date

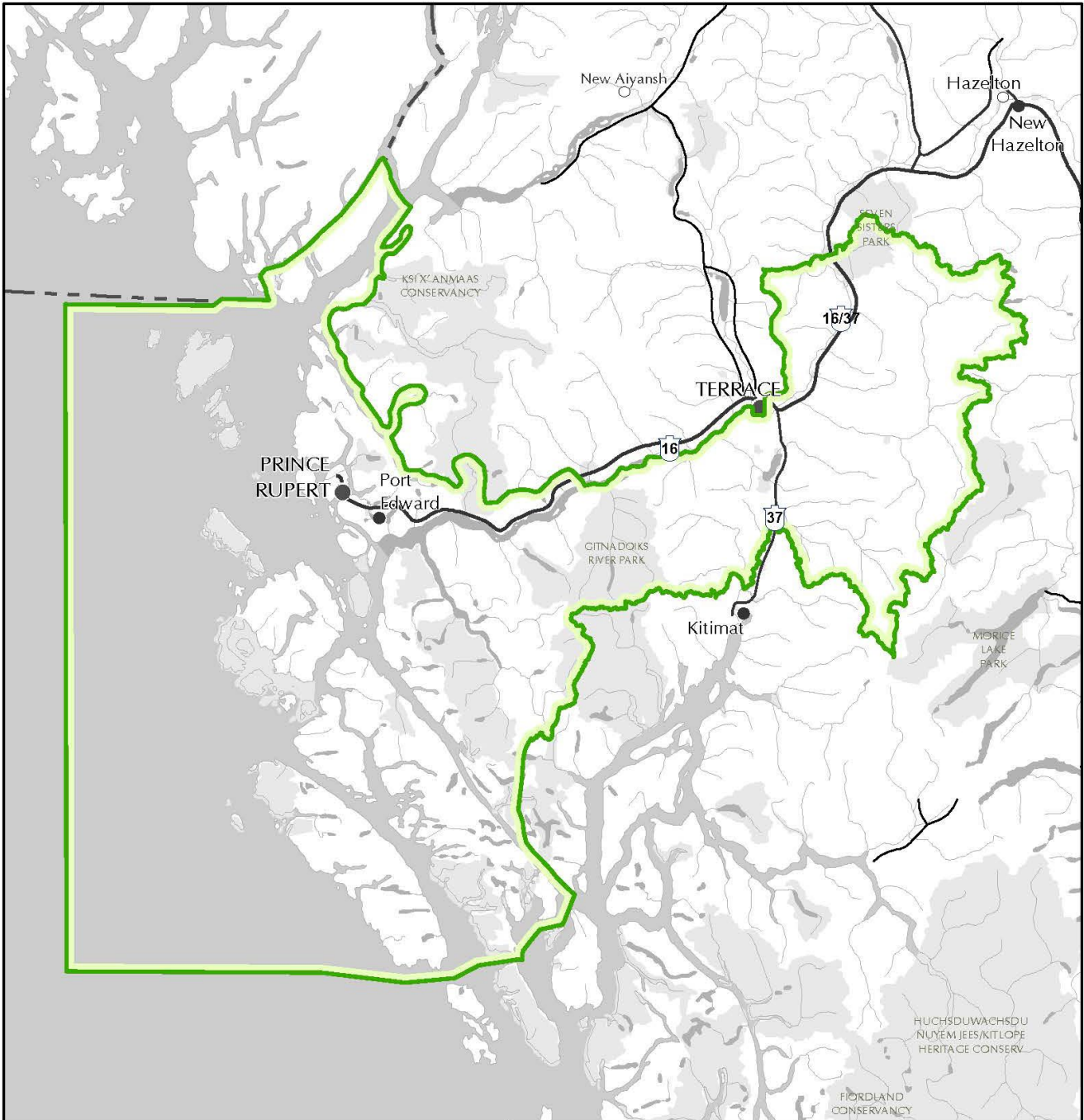
SIGNED by the **Minister of Environmental and
Climate Change Strategy:**


The Honourable George Heyman, Minister of
Environment and Climate Change Strategy

April 20, 2023
Date

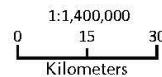
SCHEDULE A

Map of Traditional Territory



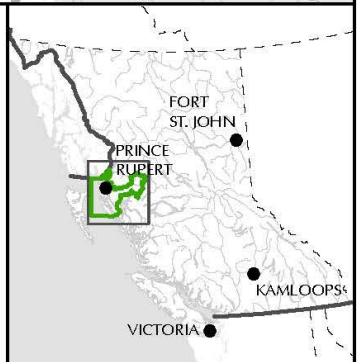
Kitselas First Nation
Map of Traditional Territory

 Consultation Area



Ratio scale is correct at 8.5" x 11" page size.

Produced for: Environmental Assessment Office
Produced by: GeoBC, LWRS
Land Use Information and Research Section, JY
Coordinate System: NAD 1983 BC Environment Albers
Date: September 12, 2022



SCHEDULE B

Project Specific EA Process

1. This Schedule B provides supplemental commitments of the Parties in respect of EA Processes in accordance with the Act.

2. **Prior to an Environmental Assessment Commencing**

- a. When either Kitselas or the EAO receives confirmation of an upcoming Initial Project Description in relation to a Project that is proposed in Kitselas Territory or where there is a reasonable possibility that Kitselas Interests may be impacted by a Project, the Party will then contact the other Party to ensure they are aware of it.
- b. For any potential Proponent that intends to submit an Initial Project Description, the EAO will:
 - i. advise the potential Proponent that a purpose of the EAO is to support Reconciliation with Indigenous peoples in British Columbia as outlined in the Act; and
 - ii. inform the Proponent of the existence and provisions under this Agreement that support Reconciliation between Kitselas and the EAO.
- c. The Parties will encourage Proponents to share a draft Initial Project Description with Kitselas as early as possible prior to the submission of the Initial Project Description to the EAO and encourage the Proponent to seek to address any comments provided by Kitselas in the draft Initial Project Description. Prior to making an order under Section 13(3) of the Act, the CEAO will consider whether the Proponent has addressed any comments provided by Kitselas as described in this Article.
- d. Where the EAO becomes aware of a Project that may require both an impact assessment pursuant to the federal *Impact Assessment Act*, SC 2019, c. 28, s. 1 and an EA, the EAO will notify Kitselas and offer to meet to discuss how the Impact Assessment Cooperation Agreement Between Canada and British Columbia (2019), as may be amended, may apply to the EA Process.

3. **Project Notifications and Reviewability of Projects (Sections 10 and 11 of the Act)**

- a. Project Notifications:
 - i. The EAO will, within five (5) days, notify Kitselas of any Project notification it receives under Section 10 of the Act for a Project that is proposed within Kitselas Territory or where there is a reasonable possibility that Kitselas Interests could be affected by a Project and will identify all relevant timelines within the notification.
 - ii. Within twenty-eight (28) days of being notified under subsection 3.a.i, Kitselas may provide written comments to the EAO on the Project notification. The written comments may include a request for further engagement with the EAO on the Project notification.
 - iii. If further engagement has been requested, prior to the CEAO decision under Section 10(4) of the Act, the EAO will provide Kitselas with the draft Project Notification Report and a timeline of at least seven (7) days for Kitselas to provide comments.

- b. Applications to designate a Project as reviewable, where Kitselas is the applicant:
- i. Prior to submitting an application under Section 11(2) of the Act, Kitselas will notify the EAO of its intention to apply and rationale for doing so.
 - ii. Within 10 days of being notified under subsection 3.b.ii, the EAO may request a Meeting with Kitselas to discuss it.
 - iii. Where Kitselas submits an application under Section 11(2) of the Act the EAO will provide to Kitselas draft decision materials including any draft recommendations.
 - iv. If the Minister requires further information from the person proposing to undertake a Project for the purpose of making a decision under Section 11(5) of the Act, the EAO will seek Kitselas' input regarding the information being requested.
 - v. If the final decision materials recommend that the Minister decline to designate the Project as reviewable, the EAO will share these materials with Kitselas upon submitting them to the Minister.
 - vi. If the Minister declines to make a designation under Section 11(5) of the Act, the Minister will provide written reasons for that decision to Kitselas within a reasonable amount of time of the notification of the decision.
 - vii. Where Kitselas applies to the Minister under Section 11 of the Act to designate a Project as a Reviewable Project, the Minister, in determining whether to make or decline to make the designation under Section 11(5) of the Act, will take into consideration the criteria set out in Section 11(4) of the Act.
- c. Applications to designate a Project as reviewable, where Kitselas is not the applicant:
- i. The EAO will notify Kitselas within three (3) days of receiving an application under Section 11(2) of the Act, where a Project is proposed within Kitselas Territory or where there is a reasonable possibility Kitselas Interests could be affected by the Project.
 - ii. Kitselas will provide any comments in writing to the EAO within fourteen (14) days of being notified under subsection 3.c.i. The comments may include a request for further engagement with the EAO on the application.
 - iii. If further engagement has been requested by Kitselas under subsection 3.c.ii, prior to a decision under Section 11(5) of the Act:
 - i. the EAO will provide draft decision materials, including any draft recommendations to the provincial Decision-Maker, to Kitselas; and
 - ii. Kitselas may request a Meeting with the EAO to seek to resolve issues related to the draft decision materials, within five (5) days.
 - iv. Where the Minister requires further information from the person proposing to undertake a Project for the purpose of making a decision under Section 11(5) of the Act, the EAO will seek Kitselas' input regarding the information being requested.

- v. Where the Minister receives an application under Section 11(2) of the Act for a Project proposed within Kitselas Territory or where there is a reasonable possibility Kitselas Interests could be affected by the Project, the Minister will take into consideration the criteria set out in Section 11(4) of the Act.

4. Early Engagement Phase (Sections 13-15 of the Act)

- a. Within seven (7) days of the publication of the Initial Project Description in relation to a Project proposed within Kitselas Territory or where there is a reasonable possibility that Kitselas Interests may be impacted by a Project, the EAO will:
 - i. send the Initial Project Description to Kitselas by email and advise Kitselas about the opportunity to be a Participating Indigenous Nation;
 - ii. identify the date by which Kitselas must notify the EAO of their intention to be a Participating Indigenous Nation; and
 - iii. identify its members of the Project Specific Working Group, pursuant to section 6.4.
- b. Within seventy (70) days of the publication of the Initial Project Description, (and ideally within thirty (30) to sixty (60) days), Kitselas will provide the EAO:
 - i. notice in writing indicating whether or not Kitselas wishes to participate in the EA as a Participating Indigenous Nation;
 - ii. any identified preliminary issues prior to the EAO finalizing the summary of engagement that includes a summary of Kitselas Interests identified in the Project area (informed by the Kitselas Values listed in Schedule C) and a summary of any key issues or concerns regarding potential Project impacts identified to date; and
 - iii. where Kitselas is a Participating Indigenous Nation, the names of its members for the Project Specific Working Group pursuant to section 6.4.
- c. If the CEAO intends to notify Kitselas under Section 14(2) of the Act that Kitselas will not be a Participating Indigenous Nation, the CEAO will provide Kitselas with advance notice of their intention and an opportunity to be heard as required by Section 14(2) of the Act.
- d. If Kitselas does not notify the EAO of their intention to be a Participating Indigenous Nation and the EAO has consultation obligations to Kitselas, the Implementation Committee will meet within ninety (90) days of the posting of the Initial Project Description to discuss whether and how Kitselas will participate in the EA Process.
- e. Following receipt of the notice identified in subsection 3.b:
 - i. the EAO will confirm funding in accordance with Article 7; and
 - ii. the Project Specific Working Group will Meet and develop the Kitselas portion of the EAO's summary of engagement which will summarize Kitselas' comments and which may also identify any additional information and engagement that may need to be addressed by the Proponent prior to submitting their Detailed Project Description.

- f. The EAO will encourage the Proponent in the summary of engagement to engage with Kitselas on the development of the Detailed Project Description in order to ensure that the information presented in the Detailed Project Description is sufficient and complete for the purposes of Consensus Seeking with Kitselas at the Readiness Decision and Kitselas' Consent Decision under section 5.d of this Schedule B.

5. Readiness Decision (Sections 15-18 of the Act)

- a. Upon receipt of a Detailed Project Description, the EAO will share it with Kitselas. The EAO will offer to Meet with Kitselas to discuss the Detailed Project Description and will Seek Consensus regarding which of the options under Section 16(2) of the Act should be exercised.
- b. The EAO will advise Kitselas in writing of its proposed course of action under Section 16(2) of the Act, including any draft recommendations. The EAO and Kitselas will Meet to review and Seek Consensus on these recommendations.
- c. Based upon the outcome of Consensus Seeking regarding the readiness of an EA, the issues resolution process in Article 9 may be used to establish a path forward.
- d. Before the CEAO makes a decision under Section 16(2) of the Act, the EAO will provide Kitselas with the opportunity and a target date to submit a Consent Decision with reasons.
- e. The EAO will notify Kitselas when the CEAO publishes a notice of decision under Section 18(2) of the Act to proceed to an EA and will provide Kitselas with a copy of this notice of decision.
- f. If CEAO's decision under Section 16(2) of the Act is contrary to Kitselas' Consent Decision, the EAO will provide written reasons to Kitselas for the decision.

6. Process Planning (Section 19 of the Act)

- a. For all Projects that proceed to an EA in respect of which Kitselas is a Participating Indigenous Nation, the Project Specific Working Group will develop and Seek Consensus on a bilateral Project Specific Work Plan to support development and implementation of the Process Order.
- b. The Project Specific Work Plan will describe:
 - i. roles and responsibilities for the Collaborative activities identified in the work plan;
 - ii. assessment methods for assessing direct and cumulative effects to Kitselas Interests, and/or any other specific studies deemed necessary by Kitselas as well as the schedule or time required to undertake them;
 - iii. information requirements and sources of information including Indigenous Knowledge requirements including any studies to be conducted by Kitselas;
 - iv. timelines and any additional expectations for consensus seeking requirements for the EA Process;
 - v. the scope and timing of any assessment undertaken by Kitselas pursuant to Section 19(4) of the Act, as well as the role of the EAO in supporting the Section 19(4) assessment;

- vi. any process requirements to support Kitselas governance and decision-making processes; and
 - vii. Kitselas' community engagement requirements.
- c. The Parties will seek to align requirements for Valued Components, potential effects to be assessed and assessment methods with the requirements of other Participating Indigenous Nations wherever possible.
 - d. Kitselas will participate in the Technical Advisory Committee as necessary throughout the EA Process beginning in the Process Planning phase. The Project Specific Working Group will seek to achieve consensus regarding the technical expertise to be represented on the Technical Advisory Committee.
 - e. The EAO will share a draft Process Order with Kitselas for comment including a draft Assessment Plan and draft Application Information Requirements.
 - f. The EAO will engage with Kitselas on the development of the Regulatory Coordination Plan and on any modifications to this Plan over the course of the EA.
 - g. During the public comment period under Section 19(5) of the Act, Kitselas will conduct any community engagement activities it requires to inform Consensus Seeking on the draft Process Order and associated documents. The Parties agree to work together to determine how the EAO can support and/or participate in these community engagement activities.
 - h. Upon completion of any community engagement activities under subsection 6.g, the Project Specific Working Group will Meet to Seek Consensus on the Process Order.

7. Application Development and Review (Section 27 of the Act)

- a. The EAO will encourage the Proponent to support Kitselas in delivering its own internal consultation processes consistent with applicable Kitselas Laws.
- b. The EAO and Kitselas will encourage the Proponent to share a draft Application with Kitselas at least thirty (30) days prior to submitting the Application to the EAO.
- c. Upon receipt of the Application, the EAO will share the Application with Kitselas and will schedule a Meeting of the Project Specific Working Group.
- d. The Project Specific Working Group will review the Application in conjunction with the Technical Advisory Committee and will develop any necessary feedback to provide to the Proponent to inform revisions to their Application.
- e. The Parties agree to work together to determine how the EAO can support and/or participate in any community engagement or community meetings.
- f. Upon receiving a revised Application from the Proponent, the Project Specific Working Group will Seek Consensus on the adequacy of the revised Application in addressing the feedback provided under section 7.d.

- g. If the Project Specific Working Group does not achieve Consensus under section 7.f, the Implementation Committee will Meet to Seek Consensus on the adequacy of the revised Application in addressing the feedback provided under section 7.d.
- h. If the Implementation Committee does not achieve Consensus under section 7.g, the Senior Officials will Meet to Seek Consensus on the adequacy of the revised Application in addressing the feedback provided under section 7.d before the CEAO accepts the revised Application under Section 27(4) of the Act.

8. Effects Assessment and Recommendations Phase (Sections 28-29 of the Act)

- a. The Project Specific Working Group will:
 - i. Collaboratively develop and Seek Consensus on the draft Assessment Report, including its analysis and conclusions, and the draft EAC, including proposed certificate conditions and certified project description as they pertain to Kitselas Interests before these materials are published for public comment under Section 28(2)(b) of the Act;
 - ii. consider whether the Project is consistent with Kitselas Laws, protocols and Indigenous Knowledge;
 - iii. coordinate any requests for additional information from the Proponent; and
 - iv. seek to involve, where practical and appropriate, other Participating Indigenous Nations with the objective of seeking broad consensus on the draft Assessment Report and draft EAC. Technical matters that pertain to other parties will be raised at the Technical Advisory Committee whenever possible and appropriate.
- b. The EAO will share the draft Assessment Report and draft EAC with certificate conditions and project description as well as draft Sustainability Recommendation with Kitselas for at least thirty (30) days concurrently with the public comment period under Section 28(2)(b) of the Act for Kitselas to review.
- c. Before the end of the public comment period referred to in Section 28(2)(b) of the Act, Kitselas will provide a written preliminary Consent Decision to the Project and reasons for the decision.
- d. Following the public comment period, the Project Specific Working Group will Seek Consensus:
 - i. On finalizing the Assessment Report and EAC with certificate conditions and certified project description; and
 - ii. on the Sustainability Recommendation.
- e. Where the Parties disagree on the assessment of impacts to Kitselas Interests, the Parties will exchange information to Meaningfully establish a shared understanding and will ensure that the recommendations to the Minister clearly represent the perspectives of both Parties.
- f. The Consent Decision provided under subsection 8.c may be amended at this stage if applicable as a result of new information provided to the EAO during the public comment period or as a result of Consensus Seeking on the Sustainability Recommendation.

9. Decision Phase (Section 29 of the Act)

- a. If the Sustainability Recommendation is contrary to the Consent Decision provided by Kitselas under subsection 8.c or as amended under subsection 8.f, and a Meeting with the Minister is accepted, Kitselas may amend its Consent Decision in response to any new information provided during the Meeting with the Minister.

10. Post Certificate

- a. The EAO will engage with Kitselas respecting a Meaningful, ongoing role in monitoring for compliance with and enforcement of EACs of Projects that affect Kitselas Interests.
- b. If Kitselas indicates interest in entering into an agreement under Section 50(1) of the Act, the CEO will, within 3 months of receiving that indication, enter into discussions with Kitselas unless the CEO considers that there are insufficient resources to enter into those discussions at that time. For greater certainty, this agreement is not an agreement under Section 50(1) of the Act.
- c. If the EAO enters into negotiations with a party other than Kitselas for an agreement under Section 50(1) of the Act that may apply on Kitselas Territory, the EAO will engage with Kitselas respecting that agreement.
- d. As appropriate, the EAO will assign a primary contact who is the main contact for Kitselas in relation to a certified Project, and who is responsible for:
 - i. engaging with Kitselas to identify compliance matters of concern in relation to the Project;
 - ii. conducting ongoing communication with Kitselas as required with respect to compliance and enforcement activities within Kitselas Territory;
 - iii. identifying and facilitating any training and mentorship opportunities to facilitate Kitselas involvement in compliance and enforcement monitoring;
 - iv. facilitating field participation by Kitselas where feasible on inspections under the Act, and communicating with Kitselas following those inspections and providing the results of inspection reports to Kitselas.
- e. Nothing in this Agreement precludes or prevents Kitselas from benefitting from provincial programs related to compliance and enforcement monitoring that may exist from time to time, including future developments in provincial statutes, regulations, or policy related to compliance and enforcement in relation to environmental assessments. For greater certainty, funding under those provincial programs will be provided in accordance with that program's funding criteria. The Parties will seek to align Kitselas participation in such programs with the ongoing involvement in compliance and enforcement monitoring of Projects.

11. Amendments (Section 32 of the Act)

- a. Where the EAO receives a written description and confirmation of an upcoming Amendment application from the Holder of an EAC or Exemption Order that applies within Kitselas Territory or where there is a reasonable possibility that Kitselas Interests could be affected by the proposed Amendment, the EAO will:

- i. notify Kitselas; and
 - ii. encourage the Holder to share and discuss its Amendment application with Kitselas prior to submitting it to the EAO.
- b. The EAO will invite Kitselas to participate in any Amendment assessment process for a Project within Kitselas Territory or where there is a reasonable possibility that Kitselas Interests could be affected by the Amendment. This notice will specify a reasonable date by which Kitselas must confirm whether it will be a Participating Indigenous Nation.
- c. If Kitselas has identified itself as a Participating Indigenous Nation, Kitselas and the EAO will, prior to making a determination regarding the complexity of the Amendment, discuss the complexity of the Amendment.
- d. Where Kitselas has identified itself as a Participating Indigenous Nation, the EA will proceed by way of the EA Process outlined in this Article 11 of Schedule B unless Kitselas provides written notice to the EAO to design an amendment process.
- e. If Kitselas provides notice under 11.d, Kitselas and the EAO will Meet and Seek Consensus on the following matters:
 - i. the roles, process, schedule, methods, and supplementary information requirements for the assessment as it relates to Kitselas Interests including whether a Project-Specific Working Group is needed;
 - ii. any draft Amendment Assessment Report, including any draft recommendation, on whether to make the Amendment, including any changes, additions or deletion of the EAC certified project description or EAC and Exemption Order conditions.
- f. Kitselas will provide a Consent Decision in writing on any draft Amendment Assessment Report and draft recommendations.
- g. If the EAO and Kitselas are unable to reach Consensus under subsection 11.e, the EAO and Kitselas will ensure that any final Amendment Assessment Report, including any final recommendation, clearly represents the perspectives of both Parties and includes the Consent Decision. Where the Amendment decision is contrary to Kitselas' Consent Decision provided under subsection 11.f, the Decision-Maker will provide written reasons for the decision to Kitselas.

SCHEDULE C
Kitselas Values

A set of five values that underpin Kitselas culture has been identified by the community that, if addressed in an EA, would protect and enhance what is important to Kitselas. These are:

- **Respect for Kitselas' History**
 - A requirement that outsiders show respect for Kitselas history ensures that the context of their impacts is acknowledged and opportunities to right historical wrongs are sought out.
- **Respect for Kitselas' Future**
 - A requirement that outsiders consider where their project fits into the future of Kitselas and ensure that Kitselas community members can be contributors and benefiteres on the journey.
- **Respect for Kitselas' Lands**
 - A requirement that outsiders demonstrate respect for Kitselas lands and help to ensure that Kitselas members' unique relationship with the lands will be protected.
- **Respect for Kitselas Self-Determination**
 - A requirement that outsiders demonstrate respect for Kitselas authority, that the Kitselas community is kept informed, and that Kitselas is able to make free, prior and informed consent decisions within Kitselas Territory.
- **Respect for the Kitselas Community**
 - A requirement that outsiders demonstrate respect for the Kitselas way and ensure that Kitselas community connections and supports are strengthened over time.

The elements that contribute to each form of respect will vary for each project being assessed, based on time and place. Kitselas will interpret this set of values as a starting point to develop the project specific Kitselas Interests as referenced under section 4(b)(ii) of Schedule B. Community members, experts and knowledge holders may determine through workshops and interviews what matters for each form of respect on a project-specific basis.

SCHEDULE D

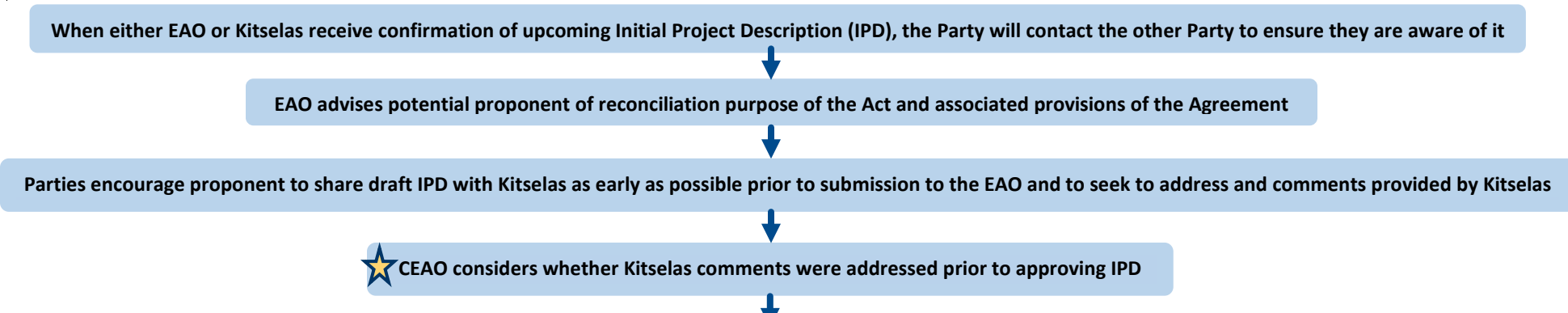
Flowchart

Legend

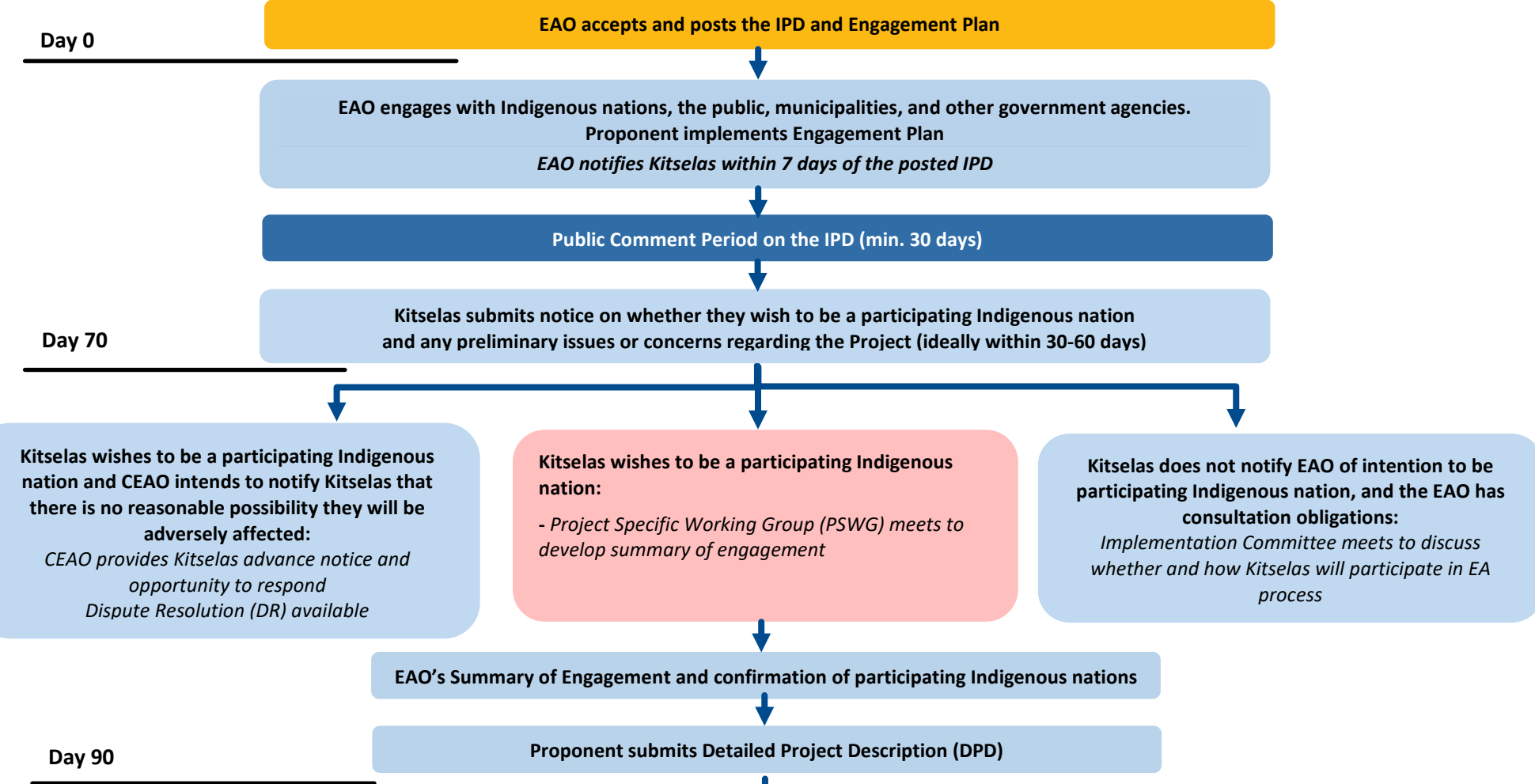
Collaboration Opportunity	
Process Step	
Decision Point	
Consensus Seeking Point	
Public Comment Period	
Step unique to the Agreement	

Environmental Assessments

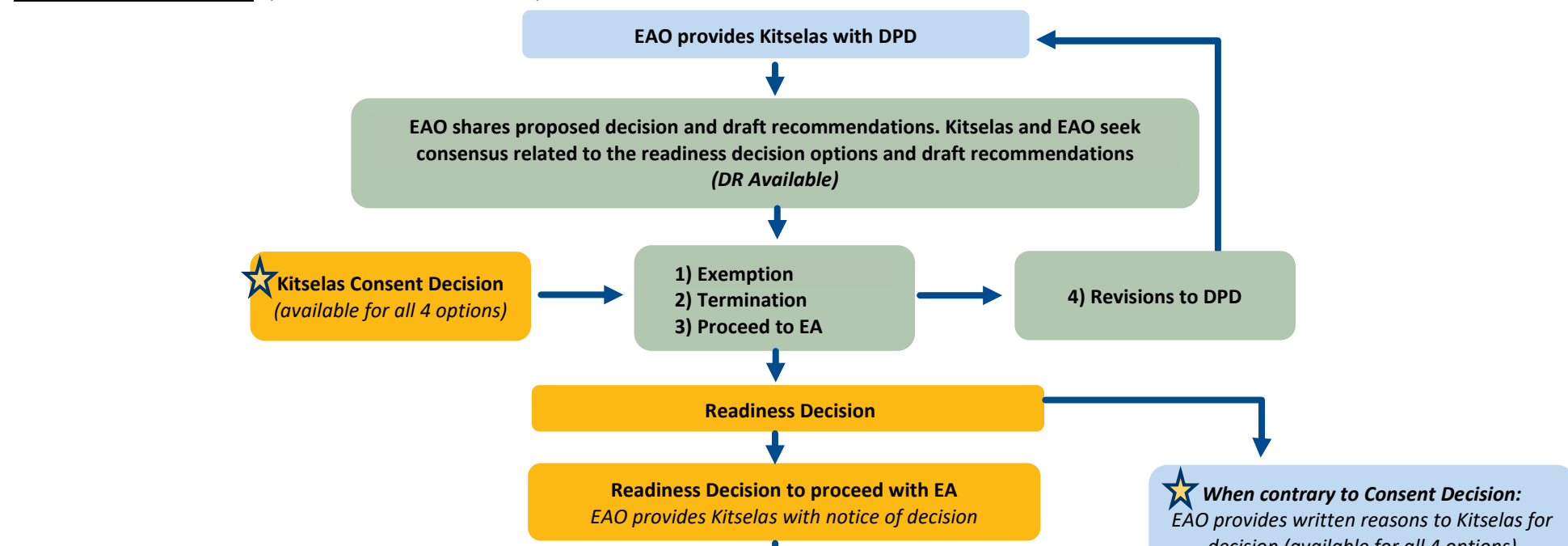
Prior to Early Engagement



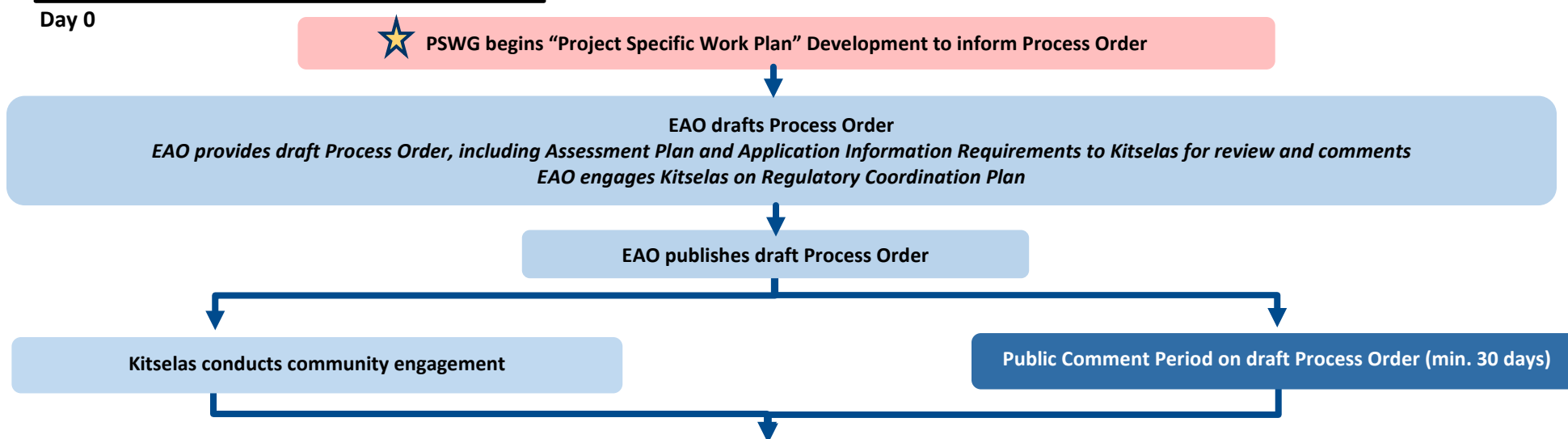
Early Engagement: 90 days (sections 13-15 of the Act)



Readiness Decision: (sections 16-18 of the Act)



Process Planning: 120 days (section 19 of the Act)



EAO updates Process Order based on input and seeks consensus with Kitselas on final Process Order
(DR Available)



Day 120

EAO issues final Process Order



Application Development and Review: 180 days (section 27 of the Act)

★ EAO and Kitselas encourage proponent to:
- Support Kitselas internal consultation processes;
- Share draft application with Kitselas at least 30 days prior to submission to EAO



Day 0

Proponent prepares and submits Application to EAO



EAO shares Application with Kitselas. PSWG provides any feedback to inform revisions of the Application

Public Comment Period on Application (min. 30 days)



Day 180

Proponent prepares and submits revised Application. EAO and Kitselas seek consensus on whether to accept the revised Application *(Issues Resolution available)* ★



Final Application is accepted for Effects Assessment



Effects Assessment and Recommendation: 150 days (section 28 of the Act)

Day 0

PSWG develops draft Assessment Report and draft EA Certificate as they pertain to Kitselas Interests



EAO and Kitselas seek consensus on draft Assessment Report and draft EA Certificate *(DR available)*



EAO shares draft referral package, including Sustainability Recommendation with Kitselas for 30 days ★

Public Comment Period on draft Referral Package (30 days)



Kitselas provides preliminary Consent Decision with reasons



EAO and Kitselas seek consensus on finalizing the Referral Package, including Assessment Report, the EA Certificate, and the Sustainability Recommendation *(DR available)*



Kitselas Consent Decision
Preliminary decision may be amended as a result of new information provided during public comment period or consensus



Day 150

Referral Package & Recommendations finalized and CEAO refers to Ministers



Decision: 30 days (section 29 of the Act)

Sustainability Recommendation consistent with Kitselas Consent Decision

Sustainability Recommendation is contrary to Kitselas Consent Decision



Meeting between Ministers and Kitselas to seek consensus



Kitselas Consent Decision may be amended in response to any new information provided during the Meeting with the Ministers



Day 30

Ministers Decision
Reasons for decisions published



Post-Certificate Compliance and Enforcement

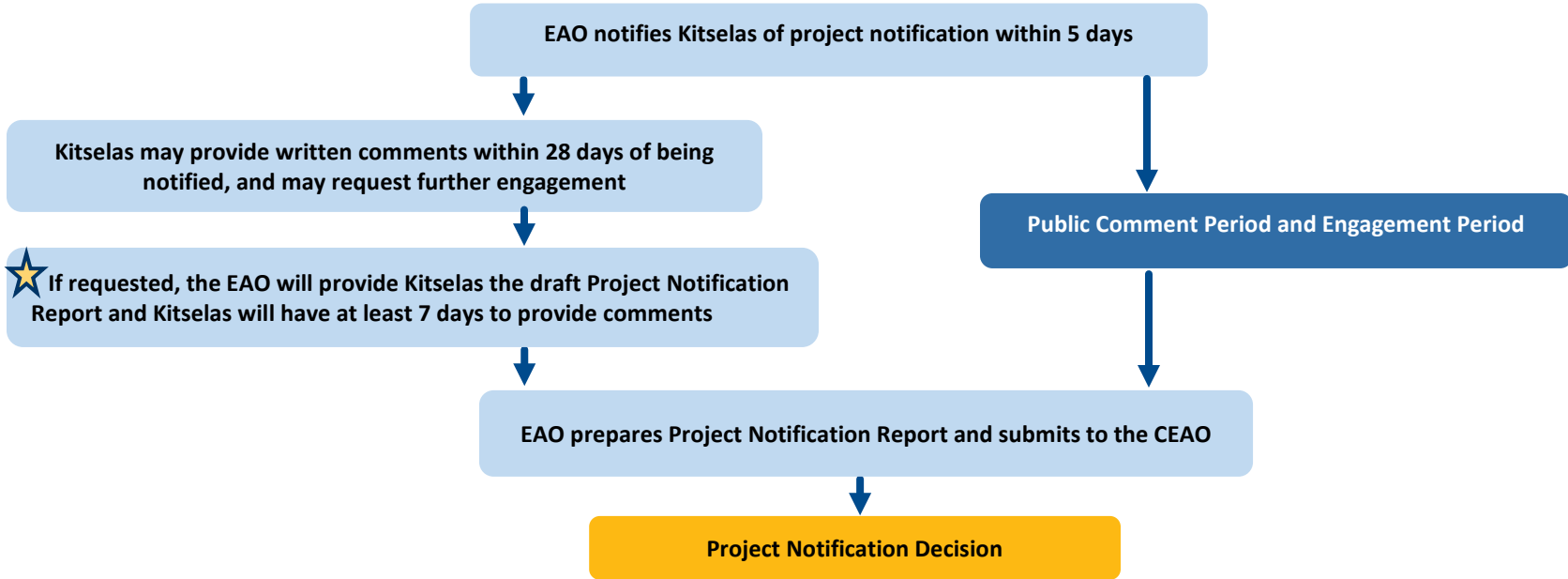
Collaborative Compliance and Enforcement process begins

Legend

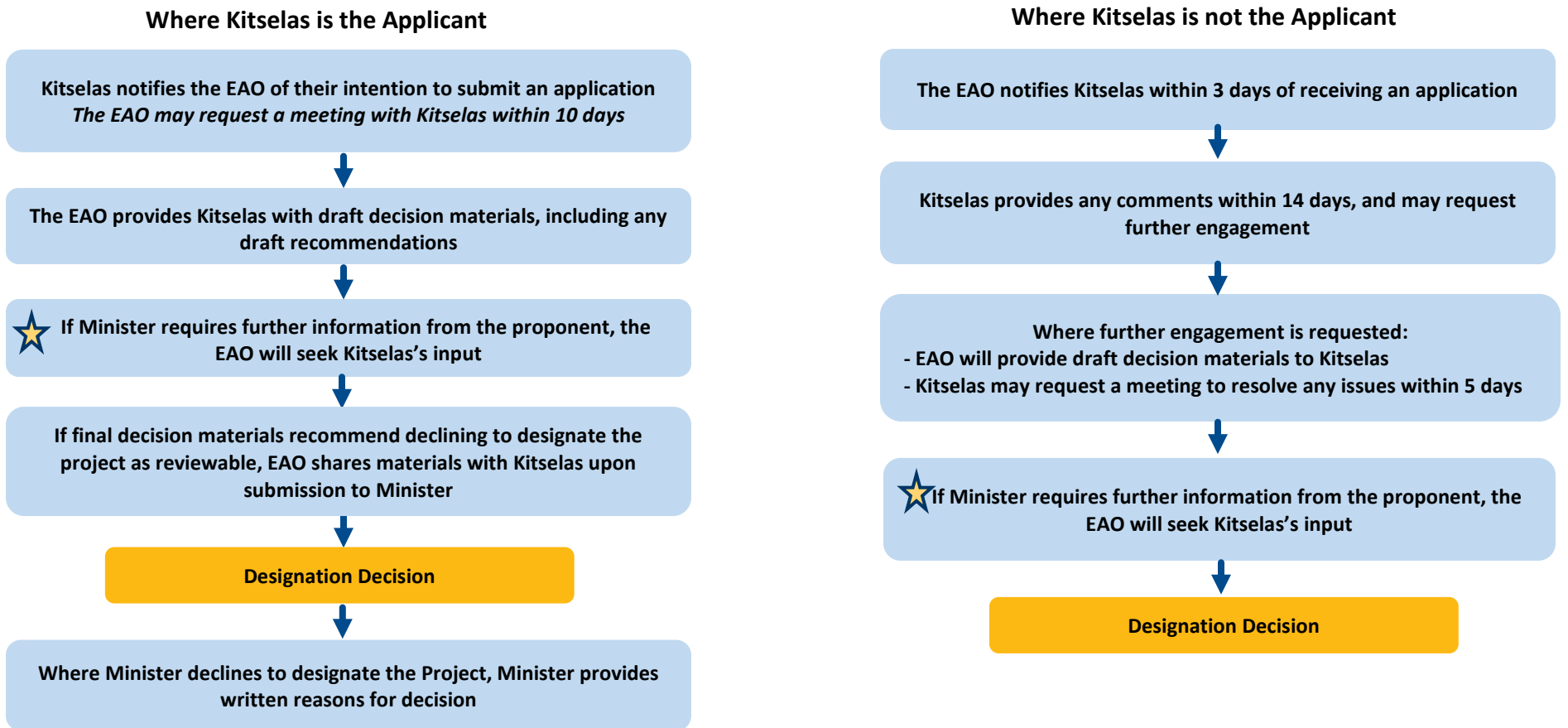
Collaboration Opportunity	
Process Step	
Decision Point	
Consensus Seeking Point	
Public Comment Period	
Step unique to the Agreement	★

Project Notifications, Designation Requests and Amendments

Project Notifications: 60 days (section 10 of the Act)



Designation Requests: 30 days (section 11 of the Act)



Amendments: (section 32 of the Act)

